

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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PATRICIA CUMMINGS,

Plaintiff,

Docket No.

19-cv-07723 (CM) (OTW)

-against-

THE CITY OF NEW YORK; NEW YORK CITY DEPARTMENT
OF EDUCATION; CITY OF NEW YORK OFFICE OF SPECIAL
INVESTIGATIONS; NYC MAYOR BILL de BLASIO; GIULIA COX;
COURTNEY WARE; BEN CHAPMAN; NEW YORK DAILY NEWS;
DR. ANDRE PERRY; THE HECHINGER REPORT a/k/a HECHINGER
INSTITUTE ON EDUCATION AND THE MEDIA; LENARD LARRY
McKELVEY a/k/a CHARLAMAGNE THA GOD; WWPR-FM
(105.1 MHZ); iHEARTMEDIA; CLEAR CHANNEL
COMMUNICATIONS, INC.; NEW YORK STATE SENATOR,
KEVIN S. PARKER; COUNCILMAN, JUMAANE D. WILLIAMS;
COUNCILMAN, DANIEL DROMM; COALITION OF
EDUCATIONAL JUSTICE; ANGELMARTINEZ;
NATASHA CAPERS, and
“JOHN DOE AND JANE DOE # 1-100” said names
being fictitious, it being the intent of Plaintiff
to designate any and all individuals, officers, members,
agents, servants, and/or employees of the
aforementioned agencies owing a duty of care to Plaintiff,
individually and jointly and severally,

Defendants.

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**AFFIDAVIT OF PLAINTIFF IN OPPOSITION TO DAILY NEWS, LP
AND BEN CHAPMAN'S MOTION TO DISMISS THE COMPLAINT**

STATE OF NEW YORK)

)ss.:

COUNTY OF NASSAU)

I, PATRICIA CUMMINGS, being duly sworn, deposes and say as follows:

1. I am the Plaintiff in the above referenced action. As such, I am fully familiar with the facts and circumstances of this matter.
2. I submit this Affidavit in conjunction with my attorney's Declaration and Memorandum of Law in Opposition to the Defendants Daily News, LP and Ben Chapman's (News Defendants), Rule 12 (b)(6)

motion to dismiss the Complaint in its entirety with prejudice; and for such other and further relief as this Court deems to be just and proper.

3. I have read the annexed Declaration and Memorandum of Law in Opposition of my attorney, Thomas F. Liotti, Esq., and the legal arguments contained therein are true to my own knowledge, and I adopt them as if set forth herein.

4. I was a probationary New York City Public School Teacher at The William W. Niles School - Middle School 118, Community School District 10, in Bronx County, New York, and I seek damages related *inter alia* to the infliction of defamation, defamation *per se*, reverse discrimination, denial of due process, severe emotional, psychological, and physical distress, loss of reputation, loss of income, expenses upon me, the erroneous termination of my employment as a New York City school teacher, and the “*badge of infamy*” with which I have forever been branded.

5. This claim arose as a result of what was fallaciously reported concerning an alleged complaint made by **one (1)** parent of **one (1)** student regarding a lesson taught by me in *one of* my social studies class on the Middle Passage, wherein I subsequently and unwillingly became the subject of a front page pictorial and story in the New York Daily News, falsely accusing me of being a “*racist*” and “making black students lie face down on the floor of her class”, and asking them: ‘*[H]ow does it feel to be a slave?*’ As a result of the News Defendants’ actions, this fabricated and erroneous set of purported “facts” was picked up by the media worldwide and transmitted to various news outlets and appeared online and in media all over the world, such as the United Kingdom, China, and Nigeria, just to name a few.

6. Any claim that the *Daily News* articles are fair and true reports of judicial proceedings, is completely false. There were no proceedings taking place at that time which alleged that I “*singled out black students and made them act like slaves*” or told them to “*lie on the floor for a lesson on slavery and then stepped on their backs to show them what slavery felt like*,” as was reported as “fact” by the News Defendants each and every time they reported on this matter, when, in fact, it was fiction.

7. Supplementing these Opposition papers herein as Exhibit A, is my responsive correspondence to Maribel Torres-Hulla, Community Superintendent of the New York City Department of Education dated October 5, 2018, prepared and sent following my receipt of a notice advising that it was under consideration whether my services as a probationary teacher would be discontinued at the close of business on October 18, 2018. My conjecture is that this notice and consideration was yet another disciplinary action/punishment stemming from the Office of Special Investigation case, wherein the allegation against me was unsubstantiated.

8. It is my intention to incorporate the arguments raised in my October 5, 2018 correspondence as though they were fully set forth herein in my Affidavit.

9. The arguments proffered on my behalf by my attorneys in the accompanying Memorandum of Law sufficiently dispute the Defendants Daily News, LP and Ben Chapman's (News Defendants) unsophisticated attempt to argue that the published articles are absolutely privileged under New York Civil Rights Law Section 74 and non-actionable opinion, as well as their attempt to hide behind the First Amendment. Thus, I present herein a sufficient basis for a denial of the News Defendants' Motion to Dismiss.

10. Based on the foregoing the relief requested by the News Defendants should be denied in its entirety; and such other and further relief should be granted to the Plaintiff, as to this Court may seem just and proper.

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WHEREFORE, it is respectfully requested that the Defendants' Motion be denied in its entirety, and that the Plaintiff be granted such other and further relief as to the Court may seem just and proper.

Patricia Cummings
PATRICIA CUMMINGS

Sworn to before me this
22nd day of September, 2019

LUCIA M. CIARAVINO

Notary Public

LUCIA M. CIARAVINO
NOTARY PUBLIC, STATE OF NEW YORK
NO. 01CI6061004 NASSAU
QUALIFIED IN QUEENS COUNTY
COMMISSION EXPIRES JULY 8, 2023